

**TESTIMONY OF
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BEFORE THE
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
OF THE
COMMITTEE ON RESOURCES
U. S. HOUSE OF REPRESENTATIVES**

July 13, 2006

Good morning Mr. Chairman and Members of the Subcommittee. I am honored to appear before you today to testify on one of the most important environmental issues, and opportunities, facing the United States -- legacy impacts from abandoned mines and the innovative efforts we can all take to help clean up pollution from abandoned mines.

The President is committed to accelerating environmental progress through collaborative partnerships and as part of this commitment the Environmental Protection Agency transmitted to Congress on May 10, 2006 the Good Samaritan Clean Watershed Act (S. 2780 and H.R. 5404). This bill is one of several cooperative conservation legislative proposals that will be submitted by the Administration this year. We are grateful to Representative Duncan, a member of your full Committee, for introducing the Administration's bill. And we are grateful to you Mr. Chairman for holding this hearing today to continue focusing attention on this important issue.

As the Denver Post editorial staff noted last week on this subject, “[I]t’s high time that Congress enables some real progress to be made toward cleaning up what is, technically, a very fixable mess.” Mr. Chairman, we look forward to working with you and members of this Committee to advance much needed and meaningful reform to solve this fixable mess.

The Abandoned Mine Problem

Inactive or abandoned mine sites can pose serious public safety and environmental hazards. According to estimates, there are over half a million abandoned mines nationwide, most of which are former hardrock mines located in the western states, and which are among the largest sources of pollution degrading water quality in the United States. Acid mine drainage from these abandoned mines has polluted thousands of miles of streams and rivers, as well as ground water, posing serious risks to human health, wildlife, and the environment. EPA has estimated that approximately 40 percent of headwaters in the West have been impacted by discharges from abandoned hardrock mines. This problem can affect local economies by threatening drinking and agricultural water supplies, increasing water treatment costs, and limiting fishing and recreational opportunities.

Challenges To Cleaning Up Abandoned Mines

Today's acid mine drainage and runoff problems can be traced to abandoned hardrock mines that date back to the mid- to late-1800s. In many cases, the parties responsible for the pollution are either insolvent or no longer available to participate in the remediation. However, over the years, an increasing number of "Good Samaritans," not responsible for the pollution, have volunteered to cleanup these mines. Through their efforts to remediate these sites, we can help restore watersheds and improve water quality. Unfortunately, as a result of legal obstacles, we have been unable to take full advantage of opportunities to promote cooperative conservation through partnerships that will restore abandoned mine sites throughout the United States.

The threat of liability, whether under the Clean Water Act (CWA) or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), can be an impediment to voluntary remediation. A private party cleaning up a release of hazardous substances may become liable as either an operator of the site, or as an arranger for disposal of the hazardous substances. As well, under the CWA, a party may be obligated to obtain a discharge permit and comply with the permit's effluent limitations, which must be as stringent as necessary to meet water quality standards. The potential assignment of liability occurs even though the party performing the cleanup did not create the conditions causing or contributing to the degradation. Addressing this liability

threat will encourage more Good Samaritans to improve the water quality of watersheds impacted by acid mine drainage.

In some cases, remediation of these sites can be complex and extremely resource intensive. Yet even partial cleanups by Good Samaritans will result in meaningful environmental improvements and will help accelerate achieving water quality standards. By holding Good Samaritans accountable to the same cleanup standards as those that caused the pollution or requiring strict compliance with water quality standards, we have created a strong disincentive to voluntary cleanups. Unfortunately, this has resulted in the perfect being the enemy of the good. EPA strongly believes that liability should rest squarely on parties responsible for the environmental damage, not on those who are trying to clean it up. EPA has seen this concept work successfully all across the country to clean up and restore brownfield properties to beneficial reuse. By removing this threat of liability, we will encourage more voluntary and collaborative efforts to restore watersheds impacted by acid mine drainage.

Let me emphasize, however, that encouraging Good Samaritan cleanups is not about lowering environmental standards nor letting polluters off the hook. Instead, this legislation will hold Good Samaritans to a realistic standard that ensures environmental improvement. And those responsible for the pollution, if still in existence, will remain accountable, consistent with the Agency's "polluter pays" policy.

Cooperative Conservation and EPA's Good Samaritan Initiative

President Bush's August 2004 Executive Order on Cooperative Conservation directs federal agencies to ensure -- when taking actions that relate to the use, protection, enhancement, and enjoyment of our natural resources -- that the agencies will engage in collaborative partnerships with state, local, and tribal governments, private for profit and nonprofit institutions, and other non-government entities and individuals. Last August, as part of the President's Cooperative Conservation conference, EPA announced its Good Samaritan Initiative that focuses on developing administrative tools to encourage more voluntary efforts to remediate damage from abandoned mines.

The first project under the Agency's Initiative involves working with the Trout Unlimited (TU) who volunteered to clean up an abandoned mine in Utah's American Fork Canyon. This project will restore a watershed that has been impacted for well over a century, improving the water quality and the habitat of a rare cutthroat trout species. We believe the TU project serves as a model of cooperative conservation -- placing a premium on collaboration and cooperation over confrontation and litigation -- and is a win-win situation for the environment and all involved. However, using administrative authorities alone (without legislation) to solve such large and complex water quality challenges posed by abandoned mines is like applying a band-aid to a hemorrhaging wound. It's not enough.

Good Samaritan Clean Watershed Act

The Administration's "Good Samaritan Clean Watershed Act" bill offers a comprehensive solution to restore watersheds and improve water quality by encouraging remediation of inactive or abandoned hardrock mining sites by persons who are not otherwise legally responsible for such remediation. In the spirit of cooperative conservation, this bill recognizes that environmental progress can be accelerated by encouraging citizens and government at all levels to achieve environmental results through cooperation instead of confrontation.

The bill is narrowly targeted to remove the most significant legal obstacles to voluntary cleanups and establishes a streamlined permit program that would be administered at the federal level by EPA, and which can be administered by states or tribes if certain conditions are met. A permit issued under this bill would allow a Good Samaritan to clean up an inactive or abandoned mine site and would offer targeted protection from CWA or CERCLA liability for the actions taken under the permit. As drafted, the bill is a freestanding piece of legislation and not an amendment to any existing federal environmental statute.

The bill also contains specific requirements regarding who is eligible for a Good Samaritan permit, the sites for which permits may be issued, and what must be included in the permit. Importantly, the bill encourages all volunteers,

whether a private citizen, municipality, company, watershed group, or non-profit organization, to participate as a “Good Samaritan” provided that they did not contribute to the creation of the pollution, are not responsible under federal, state or tribal law for the cleanup, and do not have an ownership interest in the property.

I want to take a moment to highlight a number of additional safeguards the bill provides to ensure that abandoned mines will be properly remediated:

- < It requires a thorough “due diligence” evaluation of a Good Samaritan and proposed project, ensuring that the Good Samaritan is a “good actor” who has a history of good environmental compliance elsewhere and has sufficient financial resources to complete a project;
- < It requires a determination that a project will result in improvement to the environment before any permit for the project is issued;
- < While it provides that permits shall not authorize the extraction of new mineral resources, it allows the recycling of historic waste piles if directly related to the cleanup, and only after such activities are identified in a permit application and approved;
- < It limits liability relief to only those activities undertaken pursuant to a permit issued under the Act;
- < It nullifies liability protection under the Act where an applicant engages in fraud or provides materially misleading information;

- < It requires robust public participation, including a mandatory public hearing before a permit is issued; and lastly,
- < It provides ongoing federal oversight and enforcement of cleanup activities.

Conclusion

Thank you, Mr. Chairman, for the opportunity to discuss with you the Administration's Clean Watershed Good Samaritan Act legislation. The issue of abandoned mine remediation has been discussed and debated for well over a decade. A comprehensive solution is long overdue. We applaud bipartisan efforts in both houses of Congress to fix the problem, and we look forward to working with you and your colleagues to get this important environmental legislation to the President's desk as soon as possible.

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